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September 28, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 17, 2006

Case Number: TSO-0453

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time.

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor and was granted a security clearance pursuant to that employment. In June 2006, the individual was arrested for Driving While Intoxicated (DWI) and other related offenses in connection with an incident at a campground during which the individual allegedly struck a woman with his vehicle, forcing her into an open campfire.² After being apprised of this arrest, the local DOE security office conducted an investigation of the individual. As a part of this investigation, the individual was summoned for a Personnel Security Interview (PSI) by a security specialist in June 2006.

After reviewing the information generated by its investigation, the local security office determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. They suspended the individual's clearance and informed him of their determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² At the hearing, the individual testified that the woman was not seriously injured.

The individual requested a hearing on this matter. The local security office forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced 14 exhibits into the record of this proceeding. The individual presented the testimony of his supervisor at the hearing, and also testified on his own behalf.

II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. That paragraph pertains to information indicating that the individual has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse. Specifically, the DOE is alleging that the individual has been, or is a user of alcohol habitually to excess.³ In support of this contention, the Letter cites the individual's June 2006 arrest, another DWI arrest in August 2003, and statements that he made during the June 2006 PSI indicating that he continues to consume alcohol, sometimes to the point of intoxication, that he has driven his vehicle more than a dozen times while intoxicated, and that he has reported to work with a hangover.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

³ There is no indication in the record that the individual has ever been professionally diagnosed as suffering from any alcohol use disorder.

IV. FINDINGS OF FACT AND ANALYSIS

After reviewing the entire record in this matter, I find that the DOE has made a proper showing of derogatory information raising legitimate security concerns under paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material. Specifically, the DOE has shown that the individual has habitually used alcohol to excess.

The DOE regulations do not define the terms “habitual” or “excess.” However, in previous personnel security decisions, Hearing Officers have defined “habit” to mean “a customary practice or pattern,” *Personnel Security Review*, Case No. VSA-0113, 26 DOE ¶ 83,010 (June 2, 1997) (quoting Webster’s New Riverside Dictionary) and “drinking alcohol to excess” to mean drinking to intoxication. *See, e.g., Personnel Security Hearing*, Case No. TSO-0300, May 23, 2006. It is therefore reasonable to define a “user of alcohol habitually to excess” as being someone who drinks to intoxication as a customary practice or pattern.

There is ample evidence in the record to show that during various periods of time prior to his June 2006 arrest, the individual drank to intoxication as a customary practice or pattern. During his June 2006 PSI, he defined “intoxication” as consisting of “dulled senses” and “physical limitation” resulting from the use of alcohol, and he stated that in order to reach this state, he would have to consume “three or four” mixed drinks or “four or five beers” over a period of “a couple of hours.” June 2006 PSI at 9-11. He further indicated that from 1994 to 2003, he would drink to intoxication once or twice a month, usually consuming five or six beers with friends at a bar. *Id.* at 19-23. In 2003, the frequency of the individual’s alcohol consumption decreased because he began working on weekends as a disk jockey and consequently had less time to spend with his friends in bars. *Id.* at 22-23. During this time, he would consume “five or six” beers once every one or two months. *Id.* at 23. After his 2003 DWI arrest, the individual further curtailed his drinking, consuming “two or three” drinks over the course of an evening perhaps once every other month. *Id.* at 29-30. In the six-to-nine months leading up to the June 2006 PSI, he added, he had consumed alcohol three times. On two of those occasions, including the night of his 2006 arrest, he drank to intoxication, consuming “four or five beers” and “two or three mixed drinks.” *Id.* at 31. He further stated that during the years prior to his 2003 arrest, he drove while intoxicated “more than a dozen” times, *id.* at 24, and during an earlier PSI he estimated that between his 2003 and 2006 arrests, he drank to intoxication 90 percent of the times that he consumed alcohol. March 7, 2006 PSI at 35-36.

There are serious security concerns associated with such excessive use of alcohol. Those concerns are that such use can impair an individual’s judgment and reliability, and ability to control impulses. These factors increase the risk that the individual will fail to safeguard classified matter or special nuclear material. *See, e.g., Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (*affirmed by OSA*, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (*affirmed by OSA*, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff’d*, *Personnel Security Review*, 25 DOE ¶ 83,002 (*affirmed by OSA*, 1995). These concerns are amplified in this case by the fact that the individual has, in the past, repeatedly exhibited poor judgement after consuming excessive amounts of alcohol. As previously described, he has admitted to having driven while intoxicated more than a dozen times previous to 2003 and has been arrested twice for DWI, including the 2006

incident during which he allegedly struck a woman with his vehicle, forcing her into an open campfire.

Given these concerns, it is incumbent on the individual to convince me that he has permanently modified his pattern of excessive alcohol consumption. I find there to be insufficient evidence in the record to support such a finding.

At the hearing, the individual testified that approximately one month after his 2006 arrest, he decided to permanently quit drinking. Hearing Transcript (Tr.) at 66. He explained that “it became apparent to me that it was a lot easier not to [drink alcohol], even though I’m in a lot of social situations where my friends do consume alcohol; and . . . I decided that it was easy and that it was probably in my best interests not to do that anymore, so I’ve quit completely.” Tr. at 67. The individual and counsel for the DOE stipulated that as of the date of the hearing, the individual had not consumed any alcohol for approximately nine months (or since June 18, 2006, the evening of his arrest). Tr. at 73. The individual further testified that he has not received any counseling or therapy concerning his alcohol usage, although he did attend an alcohol education class in 1997. Tr. at 54, 58-59.

In previous cases, Hearing Officers have generally found the security concerns associated with habitual excessive alcohol use to be mitigated where the individual has established a new pattern of responsible use or abstinence that is sufficient to convincingly demonstrate that the chances of a return to the previous pattern of excessive use are remote. *See, e.g., Personnel Security Hearing*, Case No. TSO-0097, February 11, 2005 (18 months of abstinence plus lifestyle changes sufficient to mitigate security concerns); *Personnel Security Hearing*, Case No. TSO-0270, April 17, 2006 (three year pattern of responsible use sufficient to mitigate security concerns); *Personnel Security Hearing*, Case No. TSO-0300, May 23, 2006 (two year pattern of responsible use plus counseling and alcohol use education sufficient to mitigate security concerns). In this case, the individual established a pattern of excessive drinking over a period in excess of 11 years. During this period, he was arrested for DWI twice, with the second arrest coming approximately three months after a PSI at which his alcohol consumption was a primary concern, and during which he stated his intention “to be more responsible where alcohol is concerned.” March 2006 PSI at 40. Against this backdrop, and the entire record before me, I am not convinced that a nine-month period of sobriety with no counseling or therapy is sufficient to demonstrate that his chances of abusing alcohol in the future are remote. Instead, I am concerned that once this security proceeding has ended and the individual’s incentive to remain sober has diminished, he will return to a pattern of periodically abusing alcohol.

V. CONCLUSION

Based on the factors discussed above, I find that the individual has failed to adequately address the security concern set forth in the Notification Letter. Accordingly, I conclude that he has not demonstrated that restoring his clearance would not endanger the common defense and would be

clearly consistent with the national interest. Accordingly, the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: September 28, 2007